

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

ALLEN RICHARD CURTIS AND MICHAEL  
WHITNEY,

Petitioners,

v.

CITY OF RAYMOND,

Respondent.

Case No. 12-2-0015

**PREHEARING ORDER, ORDER  
GRANTING SETTLEMENT EXTENSION,  
AND ORDER OF DISMISSAL**

This matter came before the Board at a Prehearing Conference held on December 21, 2012. Board members Charles Mosher and William Roehl participated. Allen Richard Curtis and Michael Whitney (Petitioners) were represented by Jeffrey M. Eustis while Carol A. Morris appeared for the City of Raymond (City).

**I. PRELIMINARY MATTERS**

By way of background, the Petitioners filed their Petition for Review (PFR) on November 20, 2012. The PFR challenged Ordinance 1801 which amended the City's Comprehensive Plan, zoning maps, and related development regulations. The PFR alleged adoption of the Ordinance violated the State Environmental Policy Act (Chapter 43.21C RCW);<sup>1</sup> RCW 36.70A.070 (preamble) and RCW 36.70A.130(1)(d);<sup>2</sup> and RCW 36.70A.130 (2)(a) and RCW 36.70A.140.<sup>3</sup> Finally the PFR alleged a failure by the City to adopt a public participation program pursuant to RCW 36.70A.130 and RCW 36.70A.140.<sup>4</sup>

The City stated in correspondence dated December 19, 2012 that Ordinance 1801 was

<sup>1</sup> PFR Issue A

<sup>2</sup> PFR Issue D

<sup>3</sup> PFR Issue B

<sup>4</sup> PFR Issue C

1 repealed on December 17, 2012 through the adoption of Ordinance 1808, thus rendering  
2 Petitioners' PFR moot. Thereafter, on December 20, 2012, correspondence was received  
3 from Petitioners' counsel in which it was acknowledged PFR Issues A, B and D were  
4 rendered moot by adoption of Ordinance 1808 but stated Issue C constituted a failure to act  
5 claim, a claim not affected by the repealer ordinance.<sup>5</sup>  
6

7 During the Prehearing Conference the parties agreed Issues A, B, and D should be  
8 dismissed. The possibility of a stay of proceedings or a settlement extension was also  
9 discussed as it is anticipated the City will take action to address Issue C in the near term.  
10 Subsequent to the conference, the parties submitted a stipulation requesting a 90-day  
11 extension for purposes of settlement pursuant to RCW 36.70A.300(2)(b) and WAC 242-03-  
12 575.<sup>6</sup> Consequently, the Board concludes the period of time for issuing a decision should  
13 be extended.  
14

15  
16 As to the issues presented in the PFR, the Board concludes Issues A, B, and D should be  
17 dismissed. RCW 36.70A.280(1)(a) provides, in part, as follows:

18 (1) The growth management hearings board shall hear and determine only  
19 those petitions alleging either:

20  
21 (a) That . . . a . . . city planning under this chapter is not in compliance with  
22 the requirements of this chapter . . . or chapter 43.21C RCW as it relates to  
23 plans, development regulations, or amendments, adopted under RCW  
24 36.70A.040 . . .

25 A lack of compliance cannot be based in this instance upon an ordinance which was  
26 subsequently repealed. The timing of that repeal rendered the challenges presented by  
27 Issues A, B and D moot and the Board is not in a position to provide relief. There is no  
28 currently effective legislative action subject to the challenges presented by those issues and  
29  
30

31  
32 <sup>5</sup> Issue C: "Is the City of Raymond in noncompliance with RCW 36.70A.130(2)(a) and .140 where it has failed  
to adopt and broadly disseminate a public participation program?"

<sup>6</sup> Filed December 27, 2012.

1 consequently jurisdiction over those issues has been lost.<sup>7</sup>

2  
3 Therefore, based on the foregoing, the Board orders:

- 4 1.) Issues A, B and D as set forth in the Petition for Review filed on November 20,  
5 2012 are dismissed.  
6 2.) The sole remaining issue before the Board is Issue C.  
7 3.) In accordance with the terms of RCW 36.70A.300(2)(b) and WAC 242-03-575, the  
8 period of time for issuing a decision is extended for a period of ninety (90) days for  
9 the purpose of exploring settlement.  
10

11 Based on the foregoing and the Prehearing Conference discussions, the following order is  
12 entered:  
13

14 **II. ISSUES**

- 15 C. Is the City of Raymond in noncompliance with RCW 36.70A.130(2)(a) and .140  
16 where it has failed to adopt and broadly disseminate a public participation  
17 program?  
18

19 ***Petitioners have the obligation to review this issue statement to ensure that it***  
20 ***properly sets forth the issue raised. If Petitioners object to the completeness or***  
21 ***accuracy of this issue statement, they must file a written motion for change together***  
22 ***with the proposed changed issue or issues in their entirety no later than seven (7)***  
23 ***days from the date of this order.***  
24

25 **III. SCHEDULE**

26 The following schedule shall remain in effect unless modified in writing by subsequent order:  
27

28 November 20, 2012	Petition for Review filed
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29  
30 <sup>7</sup> *Orwick v. Seattle*, 103 Wn 2d 249, 253(1984): "A case is moot if a court can no longer provide effective  
31 relief."

32 See also *ARD v. Mason County*, GMHB Case No. 01-2-0017, Order of 10-12-01; *Ellis v. San Juan County*,  
GMHB Case No. 97-2-0006, FDO of 6-19-97; *Hayes v. Kitsap County*, GMHB Case No. 95-3-0081, Order of  
4-17-98 at 4; *Gawenka v. City of Bremerton*, GMHB Case No. 00-3-0011, Order of 10-10-00 at 3.

November 30, 2012	Notice of Hearing and Preliminary Schedule
December 21, 2012	Prehearing Conference
March 20, 2013	Index Due (Respondent to file)
April 3, 2013	Additions to Index Due
April 15, 2013	Deadline for Dispositive Motions and for Motions to Supplement the Record (proposed supplements to be attached)
April 25, 2013	Deadline for Responses to Dispositive Motions and to Motions to Supplement the Record
May 6, 2013	Anticipated date of Orders on Motions
June 3, 2013	Deadline for Petitioners' Prehearing Brief (with exhibits)
June 17, 2013	Deadline for Respondent's Prehearing Brief (with exhibits)
July 1, 2013	Deadline for Petitioners' Reply Brief (optional)
<b>July 8, 2013 9:00 a.m.</b>	<b>Hearing on Merits of Petition</b> Location to be determined
<b>August 19, 2013</b>	<b>Final Decision and Order Deadline</b>

#### IV. RECORD

**Index** - All documents considered by the Respondent in taking the challenged action should be included in the Index.

Additions to the record are items which were overlooked and the Respondent agrees should be added to the Index. Additions to the record should be submitted with proposed Index numbers. Additions disputed by the Respondent will not be allowed as additions to the record **provided** that the Respondent notifies the Petitioners of its objection within five days of receiving notice of the proposed additions.

Petitioners shall review the Index prepared by the Respondent promptly and add to the Index if omissions have occurred. Petitioners shall leave a space of 100 numbers between the last number in the Index prepared by the Respondent and any additions offered by the Petitioners. Additions shall be limited to documents or exhibits submitted to the Respondent in the action challenged. If the Respondent objects to the additions, the Petitioners may

1 seek to add the documents to the record of documents from which exhibits may be drawn  
2 without objection through a motion to supplement the record.

3  
4 The record may be supplemented with other evidence if the motion to supplement  
5 demonstrates the evidence is necessary, or will be of substantial assistance to the Board in  
6 reaching its decision. See RCW 36.70A.290(4). Motions to supplement should also include  
7 proposed Index numbers for the evidence sought to be included in the Index. Supplements  
8 to the record may come from outside the Respondent's record but must be shown to be  
9 "necessary or of substantial assistance to the board in reaching its decision." Any  
10 supplements to the record proposed must meet the standard set forth in RCW  
11 36.70A.290(4).  
12

#### 13 14 V. EVIDENCE

15 The Index to the Record lists the documents that may be introduced as exhibits but those  
16 documents do not become evidence until they are referenced in a brief and submitted to the  
17 Board as exhibits to that brief.  
18

19 **Exhibits** – The evidence before the Board shall consist of the exhibits attached to briefs  
20 and presented to the Board. The briefs must cite the exhibits and explain how the exhibits  
21 support the arguments in the briefs. The exhibits should contain the Index number(s) from  
22 which they are drawn.  
23

24 **The parties shall tab each exhibit and submit a Table of Exhibits for briefs filed with**  
25 **the Board and with other parties.** Exhibits shall be filed at the same time as hearing  
26 briefs and served on all parties but may not be served electronically. If the brief is filed  
27 and/or served electronically, the exhibits to that brief will be deemed timely filed if they are  
28 placed in the U.S. mail postage paid on the same day. See WAC 242-03-240. Pursuant to  
29 agreement expressed by counsel during the Prehearing Conference, service between the  
30 parties shall be effectuated electronically.  
31  
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## VI. BRIEFS

Briefs shall be filed with the Board and served on the representatives of the other parties on the dates and times specified in the schedule. If no time is specified, they must be served by 5:00 p.m. The original and three copies of briefs and exhibits are required by the Board.

**Please two-hole punch the original and three-hole punch the left side of the three copies.** WAC 242-03-240 requires each party to submit an electronic version of each brief (without exhibits) to the Board, unless a party lacks technical capability.

**The opening prehearing briefs for the hearing on the merits shall be limited to 25 pages plus exhibits. Petitioner's reply brief shall be limited to 10 pages.** All exhibits shall be tabbed and include a Table of Exhibits. Documents other than exhibits shall be typewritten or printed, properly captioned, signed by the appropriate person submitting the same, shall include his/her address and telephone number, and shall be on 8-1/2 x 11 inch paper. In the event a party wishes to file a longer brief, the party must provide the reasons for additional length and request permission to file an over-length brief from the presiding officer.

**Length of Briefs** – If a brief is 15 pages or longer it shall have a table of authorities and a table of contents. WAC 242-03-590(3) states: "Clarity and brevity are expected to assist the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions."

**Motion briefs and responses shall be limited to 15 pages.** Reply briefs on motions are not allowed and, if submitted, shall be disregarded.

## VII. RULES OF PROCEDURE

The Board's Rules of Practice and Procedure shall apply to the proceedings in this case. The Board's Rules of Practice and Procedure may be found in the Washington Administrative Code (WAC), at Chapter 242-03.

1 **VIII. DISABILITY ACCOMMODATION**

2 Any person who requires an accommodation to participate in or attend hearings is asked to  
3 contact the Board at least one week in advance of the scheduled hearing to arrange an  
4 appropriate accommodation.  
5

6 **IX. FAILURE TO ATTEND OR PARTICIPATE**

7 A party who fails to attend or participate in any hearing or other stage of the adjudicative  
8 proceedings before the Board may be held in default and an order of default or dismissal  
9 may be entered pursuant to WAC 242-03-710.  
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11 **X. COMMUNICATION WITH THE BOARD**

12 Pursuant to RCW 34.05.455, the parties may not communicate *ex parte* with the Presiding  
13 Officer or other board members except on limited procedural aspects of this case. The  
14 parties are directed to Vanessa Smith, Administrative Assistant to the Board, at (360) 664-  
15 9170 or western@elaho.wa.gov, who will act as Board liaison.  
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17  
18 DATED this 28<sup>th</sup> day of December, 2012.  
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21 William Roehl, Presiding Officer  
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